

**Commission on Health and Safety and Workers' Compensation**

**MINUTES OF MEETING  
December 5, 2003  
San Francisco State Building  
San Francisco, California**

In Attendance

Kirsten Schwenkmeyer, Acting Chairperson  
Commissioners Tom Rankin, Alfonso Salazar, Robert B. Steinberg,  
Darrel "Shorty" Thacker, and John C. Wilson  
Christine Baker, Executive Officer

Not In Attendance

Commissioners Allen L. Davenport and Leonard McLeod

**Call to Order**

Acting Chairperson Schwenkmeyer called the meeting to order at 9:05 am. Ms. Schwenkmeyer thanked outgoing Commissioner Jill Dulich for her efforts to ensure that the Commission's work was successful during her tenure as Commissioner and Chairperson. Ms. Schwenkmeyer then introduced new Commissioner Alfonso Salazar of ARS Solutions, appointed by outgoing Governor Gray Davis.

**Minutes from the August 7, 2003, Meeting**

Chairperson Schwenkmeyer asked for a motion on the minutes from the August 7, 2003 meeting.

*CHSWC Vote*

Commissioner Thacker moved to approve the minutes of the August 7, 2003 meeting. Commissioner Rankin seconded and the motion passed unanimously.

**RAND Interim Report on Evaluation of California's Permanent Disability Rating Schedule**

Robert T. Reville, Ph.D., Director, Institute of Civil Justice, RAND

Mr. Reville briefed Commission members on the interim report, which went through a quality-controlled, peer-reviewed process. Mr. Reville commented that the final report, which is planned for February, would include additional analyses on ratings. He added that the new findings would not change the results but should improve the ability to make policy recommendations.

Mr. Reville first provided background to the Permanent Disability (PD) Rating study. He commented that a state-by-state study of workers' compensation costs has shown that, based on a study in 2002, California has the highest workers' compensation premium rates in the country; that permanent partial disability (PPD) is the most expensive part of the workers' compensation system; and that benefits paid as a proportion of lost earnings are comparatively low in California, driven by very low return-to-work rates.

**Commission on Health and Safety and Workers' Compensation**

**DRAFT MINUTES OF MEETING**

**December 5, 2003**

**San Francisco, California**

Mr. Reville then presented the findings of the PD rating study. The main objective of the study is to provide an empirical basis for assessing the function of the rating schedule. The study evaluates the accuracy and equity of the ratings assigned to different impairments for different workers.

Some of the key findings of the study include that: (1) the current rating schedule accomplishes its goal of targeting higher benefits to more severely rated impairments. (2) earnings losses for similarly rated impairments for different body parts vary dramatically. (3) difference in earnings losses for psychiatric claims is especially pronounced.

The study also addresses rating inconsistency across different doctors. Mr. Reville discussed applicant rating (the physician is hired by the injured worker), defense rating (the physician is hired by the "payer" -- the employer or the insurer), and summary rating. Study results show that ratings based on applicant physician medical reports are clearly higher than ratings based on defense physician medical reports. In addition, applicant rating is greater than the summary rating, which, in turn, is greater than the defense rating. Mr. Reville noted that these results show that injured workers will receive substantially higher ratings, and therefore significantly higher benefits, if they can choose their physician regardless of what kind of impairment they might have.

Mr. Reville presented the study's general recommendations which included: reducing disparities between impairment types; considering reordering benefits in proportion to wage losses; considering ways to reduce the impact of subjective factors and recognize that factors other than ratings can drive inconsistency; and incorporating incentives for return to work, such as a two-tier system.

Commissioner Wilson asked about the subject of apportionment and how California and other states deal with this.

In response to Commissioner Wilson's question, Ms. Baker stated that there has been a request from the Legislature to look into the issue of apportionment and causation.

Commissioner Wilson asked if adjustment factors that have been developed in the course of the permanent disability study could be applied to the California system.

In response to Commissioner Wilson's question, Mr. Reville stated that these factors could be used to adjust the current California PD rating system. He further noted that analysis is being done to assess whether these factors could be applied to AMA Guides.

A question from the public by Mark Gerlach asked what has been done to get data on non-economic damages, such as quality of life.

In response to Mr. Gerlach's question, Mr. Reville responded that they hoped to obtain data on quality-of-life estimates, but they have not been able to get past Ontario's confidentiality issues and obtain data.

Debbie Nosowsky from Fireman's Fund asked about what percentage of the ratings in the database were done after April 1997.

**Commission on Health and Safety and Workers' Compensation**

**DRAFT MINUTES OF MEETING**

**December 5, 2003**

**San Francisco, California**

In response to Ms. Nosowsky's question, Frank Neuhauser stated that the number of injuries prior to April 1997 would be a very small number, for example, 85-90 percent.

Commissioner Wilson asked what information there was on how California compares to other states in the area of permanent total disability.

In response to Commissioner Wilson's question, Mr. Reville stated that the study did not look at that. Mr. Neuhauser responded that he could put something together for Commissioner Wilson on this issue.

Blair McGowan of the Division of Workers' Compensation (DWC) asked if any other states have a two-tier system.

In response to Mr. McGowan's question, Mr. Reville stated that Oregon and Wisconsin have this type of system.

Andrea Kune from the Division of Industrial Relations (DIR) asked if the study would take into account industry and geographic distribution in the defense and applicant evaluations.

In response to Ms. Kune's question, Frank Neuhauser stated that the industry distribution would not change and that the study will evaluate cross-regional differences.

Commissioner Steinberg and a member of the public asked if the study has any recommendations regarding subjective medical factors.

In response to the question from Commissioner Steinberg and a member of the public, Mr. Reville stated that subjective factors clearly lead to inconsistencies and are likely to lead to litigation. There is reason to reduce reliance on subjective factors, but consideration should be given to the impact on injured workers. Consideration should also be given to return-to-work incentives to mitigate reliance on more objective factors. There was no precise recommendation in the report about subjective factors.

**The ACOEM Occupational Medicine Practice Guidelines**

Dr. Jeffrey S. Harris, J. Harris Associates, Inc.

Dr. Harris briefed the Commission on the American College of Occupational and Environmental Medicine (ACOEM) Occupational Medicine Practice Guidelines. Dr. Harris explained that ACOEM is a professional organization of physicians who treat injured workers. The purpose of the guidelines is to determine the best practices and to reduce variance in best practices. This would improve the quality of occupational medical care and provide a common knowledge base for the target audience: treating physicians and providers; referring physicians, including care managers and insurance adjusters; attorneys; and administrative law judges. The variances examined include work-relatedness, medical care, activity modification, and time off work.

Dr. Harris noted that the characteristics of excellent guidelines are based on explicit scientific evidence, expert consensus, and clear anatomic/physiologic logic. Excellent guidelines link

**Commission on Health and Safety and Workers' Compensation**

**DRAFT MINUTES OF MEETING**

**December 5, 2003**

**San Francisco, California**

clinical findings to diagnosis and proven treatments, and they are time-based. The development process of the ACOEM guidelines included literature search, review and classification of evidence and outcomes, draft recommendations, extensive peer review, pilot testing, and board review and approval.

Dr. Harris emphasized the general recommendations of the guidelines: no strong evidence that medical therapy to cure pain is as successful a restoring functional activities (California is the only state that uses pain as a disability factor); patients should accept responsibility for recovery; return to modified or full duty as soon as possible is more effective than bed rest or mobilizing exercises; relief of discomfort can be accomplished by use of non-prescription medication or an appropriate NSAID, appropriate adjustment of activity and ice/heat; return to normal activities has the best long-term outcome; and clinicians can greatly improve patient response by providing assurance and encouraging activity.

Dr. Harris identified opportunities for improving medical care, including: evidence-based attribution to work; activity management; reduction in variance of testing, treatment and lost time; and reduction in the volume of ineffective care and time off work. He noted that implementation issues would involve provider practice change so that there is clear analysis, as well as attribution of work-relatedness, and clear expectations and reasonable treatment plans, with a critical factor being the speed of intervention. Other key factors would be to correlate treatment to functional improvement and to provide for care/disability management of the entire case with adherence to guidelines.

Commissioner Wilson asked if the report is complete and if it is available.

In response to Commissioner Wilson's question, Dr. Harris stated that the report compares actual treatment patterns to the guidelines. The second edition of the guidelines will be published at the end of December.

Commissioner Steinberg asked how the guidelines fit with the Legislative process.

In response to Commissioner Wilson's question, Dr. Harris stated that the people creating the legislation looked at organizations that develop guidelines, and the ACOEM guidelines were selected as a recommendation for legislation because ACOEM is a professional, non-partisan organization.

Commissioner Wilson asked how the ACOEM guidelines would be made available to the public.

In response to Commissioner Wilson's question, Ms. Baker stated that it would be up to the industry and the AD to train judges and personnel and doctors on the guidelines. Dr. Harris commented that the first edition of the guidelines has been available since 1997. Most people in the insurance industry and most occupational therapists are aware of the guidelines.

A public member stated that the guidelines focused on the acute phase of medical intervention and asked whether the guidelines cover injured workers whose injuries occurred longer than a year ago.

**Commission on Health and Safety and Workers' Compensation**

**DRAFT MINUTES OF MEETING**

**December 5, 2003**

**San Francisco, California**

In response to the question from the public member, Dr. Harris stated that there is an abundance of data that indicates that if you intervene early, the number of people who fall into the chronic category will be much smaller. Using the ACOEM guidelines would therefore proactively change the practice patterns of doctors. In addition, regardless of the stage of the injury, the criteria for surgery and physical therapy do not change; they would still need to be scientifically evidence-based.

**California Workers' Compensation Insurance Market Overview Final Report**

Brandon Miller, Vice President, HaysCompanies

Mr. Miller stated that the HaysCompanies was retained by the Commission to provide a study of the insurance market. The project began in January 2003; over 60 system stakeholders and experts were interviewed, and a final report was delivered to the Commission in September.

The study identify some key system challenge including: lack of capacity; relentless policy pricing increases; increase in overall system costs despite reduction in claims frequency; uncontrolled medical costs and utilization rates; concentration of policies in State Compensation Insurance Fund (SCIF); pressures on California Insurance Guarantee Association (CIGA); and uncertainty in the system.

Mr. Miller noted that the report focuses on ten areas: ratemaking and pricing after deregulation; California system cost drivers (medical and permanent disability); solvency oversight; administrative and claims regulatory practices; market challenges for SCIF; CIGA; self-insurance; reinsurance; other topics; and future studies.

In the area of ratemaking, the Hays study recommendations include that: the California department of Insurance (CDI) should take a more proactive role in requesting justification for scheduled rate credits and their approval; California may wish to review reducing the rate oversight and approval mechanisms and procedures at CDI; CDI regulatory emphasis should be placed on solvency regulation and that emphasis should be on the liquidity of an insurer.

In the area of system cost drivers to address medical factors, the study recommendations include: immediately adopting fee schedules for all treatment segments to a 100 or 120% level of Medicare; adopting meaningful treatment guidelines for all areas of the body – not just for acute phases; and requiring treatment plans be developed for injuries and requiring a showing of cure AND relief from the treatment.

Mr. Miller presented several recommendations for administrative and claims practices, including: implementation of uniform billing formats and an electronic payments system to more closely replicate with other payor billing system arrangements; full funding and filling of administrative support staff positions; and implementation of an anonymous and random judicial survey or feedback process.

**Commission on Health and Safety and Workers' Compensation**

**DRAFT MINUTES OF MEETING**

**December 5, 2003**

**San Francisco, California**

Ms. Baker suggested that the report go out for public review and that Mr. Miller could return to answer comments at a later time.

Commissioner Steinberg noted that there are still problems in the insurance market. He stated that he would like the Commission to have enough time to explore these issues in depth.

Commissioner Rankin raised the issue that the deductible portion of the market has grown greatly in the past several years. He asked if this resulted in more cost being passed on to small employers, as larger employers have taken advantage of the deductibles. He asked Mr. Miller to comment on this topic.

In response to Commissioner Rankin's question, Mr. Miller stated that one recommendation is to make assessments on gross premiums rather than net premiums as is currently done. He further noted that the Hays study provides a description of deductibles.

Ms Baker asked the Commission for approval to release the Report on the CHSWC Study of the California Workers' Compensation Insurance Market by the HaysCompanies to the public for comment.

*CHSWC Vote*

Commissioner Wilson moved to release the draft Report on CHSWC study of the California Workers' Compensation Insurance Market by the HaysCompanies to the public for comment. Commissioner Rankin seconded and the motion passed unanimously.

Ms. Baker reported on the Commission's activities. Ms. Baker recognized the extraordinary work of Judge Joel Gomberg, who has retired, and thanked Larry Swezey and all of the CHSWC staff for their efforts. Ms. Baker also introduced Judge Lach Taylor who will be joining the Commission in January. Ms. Baker next recognized the support and leadership of Tom Rankin, representing labor, and of outgoing Commissioner Jill Dulich, representing employers, as well as the efforts of Libby Sanchez and Senator Alarcón.

Ms. Baker reported that the Commission has been invited to co-sponsor several events. The first event is a conference in February 2004 on research in the area of permanent disability at the University of Southern California. This conference is co-sponsored by RAND, USC and the Commission, at no cost to the Commission.

The Commission has also been invited to jointly sponsor ACOEM training sessions with the Division of Workers' Compensation (DWC), again at no cost to the Commission.

Ms. Baker reported that Commission staff have prepared the 2002-2003 Annual Report. Many of the recommendations were developed from our studies and many of these were included in Senate Bill 228 and Assembly Bill 227. We have incorporated additional recommendations, which include:

**Commission on Health and Safety and Workers' Compensation**

**DRAFT MINUTES OF MEETING**

**December 5, 2003**

**San Francisco, California**

- Stabilize the Workers' Compensation Insurance Market and Reduce Workers' Compensation Costs and Premium Rates to Employers
- Improve Efficiency of Administration
- Streamline Benefit Delivery and Focus on Return to Work
- Maintain a Healthy Workforce through Prevention and Worker Protection
- Reduce Disputes
- Control Workers' Compensation Costs and Ensure Access to High-Quality Medical Care
- Explore Targeting Benefits and Integrating Systems

Ms. Baker asked the Commission to approve the 2002-2003 Annual Report for distribution.

*CHSWC Vote*

Commissioner Steinberg moved to approve the 2002-2003 Annual Report for distribution. Commissioner Salazar seconded and the motion passed unanimously.

Ms. Baker provided an update on The Worker Occupational Safety and Health Training and Education Program (WOSHTEP) administered by the Commission. Since the beginning of the 2002/2003 fiscal year, the following action items have been accomplished:

- A listing of multilingual training resources in health and safety, created and posted on our website.
- Needs assessment activities with key constituency groups, including insurers, employers and labor unions. Dialogue with key constituencies and interested parties is ongoing.
- Meeting with a WOSHTEP insurer work group that consisted of representatives from the major workers' compensation carriers in California including: SCIF, Liberty Mutual, Clarendon Insurance Group, Fremont Employers, St. Paul Companies, Safeco Insurance, State Farm, Travelers Insurance and Fireman's Fund.
- Outline of a core curriculum to prepare workers to actively participate in and support injury and illness prevention efforts in their workplaces, as well as a contract with the Labor Occupational Health Program (LOHP) at UC Berkeley to develop the core curriculum and several supplemental modules. UCLA's Labor Occupational Safety and Health Program (LOSH) is contracted to draft several supplemental modules as well.
- Four pilot trainings scheduled to take place in the spring, two in Northern California and two in Southern California. Between 20 to 28 employees are scheduled to attend each training.

**Commission on Health and Safety and Workers' Compensation**

**DRAFT MINUTES OF MEETING**

**December 5, 2003**

**San Francisco, California**

- Future steps include:
  - Develop a concrete evaluation plan to measure the effectiveness of the pilot training and actual results.
  - Look at existing training networks and initiating discussions with community colleges, adult schools, insurance carriers and outside vendors interested in participating as part of the statewide network of trainers mandated by the statute.
  - Explore the creation of a WOSHTEP certificate program as an incentive for participation by both employers and employees.

Ms. Baker stated that a proposal for an evaluation is included in the Commission packet. It is required by Labor Code to evaluate the program each year. An outside evaluator within the state system, San Francisco State University, has been identified.

Ms. Baker asked the Commission to approve a contract with San Francisco State University to provide an evaluation of the WOHSTEP program.

*CHSWC Vote*

Commissioner Rankin moved to approve a contract with San Francisco State University to conduct an evaluation of WOSHTEP. Commissioner Thacker seconded and the motion passed unanimously.

Ms. Baker also presented a proposal to augment the contract with UC Berkeley to update the Commission's handbook with information for injured workers. This information has been very effective to-date, and there are thousands of visits by workers and employers to the website for information. Ms. Baker noted that this information will be updated to reflect changes in the law, and that there are sufficient funds to cover changes to the law in 2004. This contract would also cover a handbook or review of information on carve-outs.

Ms. Baker asked the Commission to approve a second augmentation of the CHSWC Project "Consolidating and Coordinating Information for Injured Workers" to update the information for injured workers.

*CHSWC Vote*

Commissioner Rankin moved to approve a second augmentation of the CHSWC Project "Consolidating and Coordinating Information for Injured Workers" to update the information for injured workers. Commissioner Thacker seconded and the motion passed unanimously.

Ms. Baker stated that Commission staff prepared a background paper on 24-hour care.

Commissioner Steinberg asked how soon the Commission anticipates a final draft on 24-hour care and if the current preliminary draft responds to the Legislative request on this topic.



**Commission on Health and Safety and Workers' Compensation**

**DRAFT MINUTES OF MEETING**

**December 5, 2003**

**San Francisco, California**

In response to Commissioner Steinberg's question, Ms. Baker stated that the current preliminary draft does not respond to the Legislative request and is more for information purposes. The Commission would like to ask RAND to potentially assist with a study of the impact of 24-hour care and a response to the Legislative request.

*CHSWC Vote*

Commissioner Wilson moved to release the Preliminary Draft of the CHSWC Background Report on 24-Hour Care to the public for comment. Commissioner Rankin seconded and the motion passed unanimously.

Ms. Baker reported that the Commission has received several requests from the Legislature for issue papers and discussion including:

- Study of 24-Hour Care
- Study of Compensability and Apportionment
- Study of Integration of workers' compensation and Disability Insurance

Ms. Baker asked the Commission for approval to respond to the Legislative requests for background papers and to enter into contracts or interagency agreements as needed.

*CHSWC Vote*

Commissioner Rankin moved that the Commission respond to the legislative requests for a Study of 24 Hour Care, a Study of Compensability and Apportionment, and a Study of Integration of Workers' Compensation and Disability Insurance and to enter into contracts or interagency agreements as needed. Commissioner Thacker seconded and the motion passed unanimously.

Commissioner Wilson asked if the Commission has resources to do these studies.

In response to Commissioner Wilson's question, Ms. Baker stated that the Commission does have the resources to do these studies.

Ms. Baker noted that Frank Neuhauser prepared a study at the request of John Garamendi during the Legislative session to prepare estimates on the range of savings from the introduction of guidelines including ACOEM.

Ms. Baker asked the Commission to approve for posting on the Commission's website the study that was done at the request of Insurance Commissioner John Garamendi, which provides estimates of the range of savings from the introduction of guidelines including ACOEM.

**Commission on Health and Safety and Workers' Compensation**

**DRAFT MINUTES OF MEETING**

**December 5, 2003**

**San Francisco, California**

Ms. Baker then asked the Commission wished to approve the release of the Interim Study on Permanent Disability for public comment.

*CHSWC Vote*

Commissioner Steinberg moved to approve the release of the Interim Study on Permanent Disability for public comment. Commissioner Wilson seconded and the motion passed unanimously.

Commissioner Rankin asked CHSWC to look at the subject of diagnosis guidelines. Commissioner Steinberg asked Dr. Harris if there are guidelines within the ACOEM guidelines for determining diagnoses.

Ms. Baker stated that there would be background work done by staff on this issue.

Chairperson Schwenkmeyer stated that the next matter was the election of the 2004 chairperson. Ms. Baker commented that the chairperson for 2004 would be a labor representative. Commissioner Thacker nominated Tom Rankin. Commissioner Wilson seconded and the motion passed unanimously.

Commissioners Steinberg, Rankin and Wilson acknowledged the outstanding work of past chairperson, Jill Dulich. Suzanne Maria also commented that Jill Dulich was instrumental in implementing the 2003 reforms.

Commissioner Wilson commended CHSWC staff on their exceptional work on the Annual Report.

There were no further matters for discussion and the meeting was adjourned at 12:00 pm.

Approved:

Respectfully submitted,

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Chair

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Date

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Christine Baker, Executive Officer      Date